ADDRESS OF THE CENTRAL EXECUTIVE COMMITTEE.

To the People of North Carolina:

The Central Executive Committee of the Democratic-Conservative Party feel authorized and called upon to address the people at this time, upon matters of grave public concern, and they venture to trust that what they say will receive the candid consideration of every citizen.

The Legislature at its late session, made provision by which to enable the people of the State on the first Thursday in August next, by popular vote, to call a Convention and elect delegates to the same, for the purpose of amending the State Constitution. The propriety and wisdom of this action cannot be seriously questioned when we consider the causes that gave rise to it.

The defects in the present Constitution, are so many and so manifest, that almost every person of ordinary intelligence, without reference to party affiliations, concedes that it needs to be materially altered and amended.

The organic law of the State should be so plain, precise, harmonious and logical in its form and terms as that the plainest mind may understand it, and as to leave as little as possible to inference and legislative and judicial construction. It is intended and ought to be the bulwark of the peoples' rights and liberties. To the extent, that any of its provisions are left to inference or constructions, to that extent are the rights of the people and often their most valuable rights, left to the whim and caprice of their Executive, Judicial and Legislative officers—moved sometimes by the voice and influence of party zeal and strife, at others, by corrupt considerations, and yet others by ignorance and stupidity.

Our present Constitution is flagrantly liable to such objections; it is loose, illogical, contradictory and absurd in many of its most material provisions, so much so, that a wise and learned lawyer has said of it upon his sworn opinion, that it "is a medley of confusons and contradictions." The compass of this address will not allow us to cite but one or two illustrations of the truth of what we say.

The Constitution requires in one section that the Legislature shall provide by adequate taxation for the payment of the interest on the public debt and the debt itself. In another section it provides that the capitation tax shall not exceed two dollars on the head for State and county purposes, and that the tax on *three hundred* dollars worth of property shall not exceed the tax on the head. If these provisions are to be taken according to their terms and any reasonable construction, an impossibility is required, because at such rates of taxation, the whole property of the State, together with the capitation tax, is not sufficient to raise revenue sufficient to pay the interest of the public debt recognized by the very Convention that framed the Constitution, to say nothing of the ordinary expenses of government.

Because of this absurdity, our Supreme Court have held that the last provision above mentioned did not apply to the debt of the State as it existed at the adoption of the Constitution. The Court was obliged to make some decision; they made this, and thus virtually *made* one of the most important provisions in the Constitution, which turns the Legislature loose on the people.

Another section provides, that "the Superior Courts of the State shall be *at all times open* for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury. Another section provides for twelve Superior Court Judges, each of them for a circuit embracing about eight counties,—so that it is physically impossible to keep the courts open, unless the Judge shall have *deputies*, an unheard of thing in all systems of judicature, and no provision is made for such deputies.

This absurdity had to be met; and the Supreme Court was driven to a construc-

tion, which virtually strikes out a material provision of the Constitution and one that lies at the root of our present judicial system. While the Superior Courts are required by the Constitution to be open at *all times* for *all business*, except the trial of issues of fact by a jury, an act of the Legislature providing that certain business, which is really the larger and more important part of the business of the Superior Courts, shall be transacted only at the semi-annual terms, is held by our Supreme Court to be valid and to harmonize with the Constitution.

These are but examples of the contradictions and absurdities that abound in the Constitution. So great are the difficulties that arise in the practical working of the judicial system inaugurated under the Constitution that it is not surprising that there is to be found in the recent decision of the Supreme Court, a distinct recognition of the necessity of "*judicial* legislation"—a doctrine hitherto unheard of in the jurisprudence of the State, and one that seems to us at variance with the theory of republican government in which the functions of the Executive, Judicial and Legislative departments are supposed to be distinct and separate.

It is not three years since the new constitution went into operation, yet many suits have already been brought and prosecuted through the several courts, with much expense, to ascertain the rights of the citizen under its conflicting provisions; and we have seen the Supreme Court, in several instances, compelled virtually to make sections of the Constitution, in order to reconcile irreconcilable provisions. Whatever may be the character and learning of the judiciary, it is dangerous in the extreme, that the most valuable rights of the citizen should depend upon an organic law, so uncertain and conflicting in its terms as that five men must have the power by *construction* so to change and amend it. This objection alone is sufficient to warrant the prompt action of the people. The reports of the Supreme Court are accessible to all, and fully sustain what we have said on this subject.

The Constitution has completely overturned and abolished our old system of jurisprudence, and introduced a new one, in no sense adapted to the wants, habits, tastes, convenience or economy of our people, and it may be said of it most truly, that it is loose, uncertain and illogical, giving rise to interminable litigation and endless *judicial legislation*. Fully one-third of the cases that go before the Supreme Court go there upon questions of practice and construction, growing out of the "Code," and which bring justice and satisfaction to nobody. This is not only our experience, but it is the experience of New York and other States where it prevails.

It may be further said of it, that it is corrupting in its tendencies to the Bench, the Bar and the officers of Court. Under it, much of the business is done privately at chambers and in the clerk's office in the absence of opposing parties and counsel—the amplest opportunity is afforded for corrupting the Judges, the officers of Court and counsel; and our short experience harmonizes with that in other States under "the Code," and proves the truth and force of this objection.

The township system in each county is exceedingly cumbersome and expensive, and quite as complicated, and gives rise to great confusion and expensive litigation. A great number of officers are necessary, and these must be paid reasonable compensation, else the county machinery must cease to work and thus give rise to interminable and intolerable confusion. This system does not suit the necessities and wants of our people—it is not needed by them, however well it may be adapted to a densely populated and wealthy country like New England.

The provisions of the Constitution in reference to raising revenue and taxation are in the most conflicting and confused condition. Already they have given rise to the most serious and expensive litigation, and will continue to do so if not amended and reformed. Even the decisions made by the Court on these subjects are often unsatisfactory—the judges differing widely in their opinions from each other.

There are other serious objections that we need not now point out, but which are worthy the most serious consideration of every citizen of the State, the remedy for all which is in and through a Convention of true-hearted native North Carolinians. Our Constitution would not be what it is now if our own people had framed it. It is the handiwork, in a great

measure, of ignorant, unprincipled adventurers, who had not the inclination to consult the wants, tastes, and necessities of the people, nor the capacity to put together disjointed parts, and fragments taken from other State Constitutions. It is the shame of every North Carolinian, white and black, that adventurers and strangers, feeling no interest in us, have made our Constitution, and such an absurdity as it is! However we may differ upon questions of politics, let the good and true of all parties and colors stand together as North Carolinians to make a Constitution by and through a Convention of true-hearted North Carolinians, and such a one as will be worthy the descendents of a noble ancestry.

The method adopted for calling the Convention is eminently proper—indeed, we undertake to say that it is the only one that fully harmonizes with the great democratic principle underlying American government—the right of the *people to rule*, and especially to make, amend and control their organic law. The method adopted is founded upon the great principle of popular government common to all the States of the Union, and is in perfect harmony with every provision, as well as the spirit of our present State Constitution. There is no provision in the Constitution which, in terms or by any reasonable implication in the slightest degree, abridges or impairs the right of the PEOPLE of the State to alter or amend it, or call a Convention for that purpose. There is no word of limitation on their power in any of these respects, and although it was not necessary that they should do so, they have been careful to provide in terms their purpose not to part with such powers; for it is provided in our Bill of Rights in these words:

"SEC. 2. *That all political power is vested in and derived from the people; all government, of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.*"

SEC. 3. *That the people of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government, whenever it may be necessary to their safety and happiness; but every such right should be exercised in pursuance of law consistently with the constitution of the United States.*"

SEC. 37. *This enumeration of rights shall not be construed to impair or deny others, retained by the people; and all powers, not herein delegated, remain with the people.*"

The only limitation in the Constitution in reference to calling a Convention is imposed on the *Legislature—that body* shall not call a Convention unless by the concurrence of *two-thirds* of the votes of all its members—but that body may in the ordinary way of legislation, provide means by and through which the *people* may, at any time, call a Convention; the Legislature has such power by the whole tenor and spirit of the Constitution as well as by the express terms quoted above. The *people* may do what the Legislature cannot—the *people limited* the powers of the *Legislature* about calling a Convention—they did not undertake to limit themselves, and it may well be questioned whether, if they wished, they could do so, in such way as to bind the present generation, much less any succeeding one. But in addition to the plain meaning of the Constitution and the grand principle of American government, underlying it, to which we have adverted, the people of North Carolina have, time after time, sanctioned such a method of calling a Convention—they have by their practice not only recognized the doctrine above mentioned, but have acted upon it and created precedents that have been acted upon in most, if not all, the States of the Union.

It is sometimes said that in 1861 the Legislature passed a similar Convention act by a *two-thirds* vote of the whole Legislature—but that was then done out of abundant caution and not for the purpose of amending the Constitution, and was the only instance of such action, and such a vote was then unnecessary.

The plan adopted is so manifestly in accordance with every principle of the Constitution and the doctrines of popular government, that we can scarcely credit the sincerity of those who suggest the contrary.

The act providing for calling a Convention, wisely provides that it, if called, shall not have power to interfere with the Homestead provision of the present Constitution, nor with the political and civil rights of the colored people, nor with the provision for amechanic's and laborer's *lien:*

This expression in favor of the colored people, ought to satisfy them that there is no purpose to disturb their rights, but it may be as well for them to understand, if they do not, that their political and civil rights are established by the Constitution of the United States, and the proposed Convention would have no power to disturb them.

There can be no reasonable objection to a laborer's lein—he is entitled to it upon every principle of good government as well as the spirit of the scriptural maxim, "the laborer is worthy of his hire."

The propriety and necessity of a *Homestead* for every family in the land, is rapidly becoming the settled policy of the American people as well as the people of this State. It is wise, just and humane, and rests not only on these grounds, but on the further ground of sound *public policy*. The State and society have a direct interest in the proper rearing and culture of every child within its borders; it is matter of high moment that every child shall have a *home*, to the end, he may not become a wanderer, a beggar and often a vagabond and criminal. Every family should have a *home*—it gives dignity and fixedness to citizenship and stimulates parents and children to honest and honorable efforts to educate, elevate and fit themselves for society. This humane policy has the sanction of the great mass of the people and it is fixed not only in the Constitution, but by a solemn decision of our Supreme Court, which is binding as a high judicial precedent on all future courts and judges.

It is worth while here to bring to the attention of the people the fact that wicked and designing factionists in this State and political demagogues out of it, for the purpose of securing and promoting their personal and political ascendency have been and are now working to produce the impression, here and elsewhere, and especially among the people of the Northern States, that the great mass of our white people are hostile to the negro race and the Federal government, and desire to overthrow the latter—they persistently make such false and scandalous representations and undertake, we regret to say with some success, to sustain their allegations by falsely attributing to political motives every crime and outrage perpetrated in secret and by persons in disguise. Such offences they greatly magnify in number and character, while they make no diligent or reasonable efforts to bring the offenders to justice, although they and their friends for the most part, control the whole machinery of government whereby to bring offenders to merited punishment. Indeed, there is much reason to believe that in many instances, they have directly or indirectly, procured the perpetration of such outrages in order to stir up civil strife to serve political purposes. In repeated instances it has been made to appear by positive proof, that their political associates, black and white, have perpetrated such offences. And facts and circumstances within our knowledge leave no doubt on our minds, that these desparate political adventurers have, by preconcert, arranged to bring upon the people the calamity of Federal military rule and a suspension of the privilege of the writ of *habeas corpus*, on purpose to produce terror among the people, and thus deter them from suppressing through the ballot box in August next, the radical misrule, extravagance, oppression and intolerable taxation which have blighted the remaining prospects of their future prosperity. The initiatory steps have been taken. They need a pretext for such military interference, and hope to create a sufficient one by stimulating crime and outrage, and then publishing throughout the country, the most alarming, extravagant and exciting accounts of the same, and asserting the pretended inability of the courts to bring offenders to justice. This work has been begun already, and every radical official, both State and Federal, who will consent to lend himself to so base a purpose, will contribute his effort in that respect. Already we find officers in the Internal Revenue service as well as State officers, making reports of the most extravagant character, of crimes and outrages and their inability to execute their offices without the aid of military force. The manifest purpose of all this is to prepare the pretext for inaugurating a reign of military rule and terror and by such means thwart and stifle the popular will. They must have a pretext—they can in no other way create one. The imputations made by the Radical leaders above referred to, against the white people,—that they are

hostile to the colored race and the federal government, and that they, or considerable numbers of them, endorse or connive at crime and outrage, we know to be shamefully and wickedly false and groundless—nevertheless they are made and for the sinister purposes already indicated.

We sincerely trust the people of all classes and parties everywhere will disappoint their hopes—that peace and good order will prevail in every section of the State. Crime of all kinds is wrong—to be deprecated and denounced, and its authors punished according to the laws of the land but crime perpetrated under circumstances of terror and, by persons in disguise is doubly to be condemned, and it is the imperative duty of every good man to be specially active in bringing such offenders to justice and punishment—and particularly at this time, let every one feel called upon to be careful to see that such offenders are brought before the Courts, to the end they may be punished, and further, that the country may see who they are. If the Courts and their officers will not do their duty vigilantly, let every citizen trouble himself to expose every such refusal or neglect of duty. We are confident that the Courts and prosecuting officers have not made any active or reasonable effort to ascertain secret offenders. Let them double their diligence, and where they are incompetent, let special ones be employed. Notwithstanding the clamor raised just before the last election, and the pretended military effort to bring alleged offenders to justice, not one, so far as we have learned, has been brought before the Courts. The Governor took and has taken no steps to order Courts of Oyer and Terminer, and the pretended zeal of executive and judicial officers in behalf of law and order and the weak and helpless, passed off with the excitement of the election.

We trust the people will carefully abstain from all violence and make extraordinary effort to preserve perfect peace, order and harmony, while they make a mighty effort to remove the curse and blast that now darken their hopes and destroy their substance.

THOMAS BRAGG, Chairman,
A. S. MERRIMON,
M. A. BLEDSOE,
J. Q. DECARTERET,
J. H. MOORE,
C. M. BUSBEE,
J. J. LITCHFORD,
R. H. BATTLE.

CONSTITUTIONALITY OF THE CONVENTION ACT.

OPINION OF HON. B. F. MOORE.

Robert P. Waring, Esq.:

I have received yours requesting my opinion upon the question, whether the people can have the rightful power to assemble in convention and alter their constitution, unless such convention shall be called (according to the provisions in article XIII of the state constitution) by the general assembly, and then "by the concurrence of two-thirds of all the members of each house?"

My opinion upon the same point has been requested by many others of my fellow-citizens.

Under such circumstances, and in view of a matter so deeply involving the great political rights of the people, I feel that it would be a default of duty should I withhold any information I may possess upon a subject so interesting to the public.

The conclusions which I have formed upon this subject result from an undeviating "recurrence" to the fundamental "principles" of our government, which place all power in the people of the state, subject only to those restraints put upon that power by the constitution and laws of the United States.

Under the present form of our state government I hold, with the "Declaration of Rights," "that all political power is vested in and derived from the people;" that "all government, of right, originates from the people, and is founded upon their will only;" that "the people of the state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government;" and that "every such right should be exercised in pursuance of law, and consistently with the constitution of the United States."

Acknowledging the existence of these fundamental principles, in the fullest latitude consistent with their reasonable construction, I shall proceed to apply them in solving the question under consideration.

All laws, made for the government of the people of the state, are properly divided into two great classes: 1. Those which are made by the people in their primary capacity, while acting for themselves through unrestrained agents, and representing the people as fully as the people could represent themselves were they personally present and acting. Such of this class of laws as are not subjected to repeal or modification by the general assembly constitute what is termed the *constitution*, or fixed laws, that is, laws fixed until they are annulled or modified by a power as supreme as the power which made them, namely, the people themselves, acting in their primary capacity. 2. Those laws which are made by the people, through their representatives acting for them under, and in subordination to, the constitution or fixed laws; these constitute what are usually termed *laws*. They are repealable by the same authority which made them; and it is out of the power of that authority to remove such laws beyond the reach of that authority, because the same power which makes a law can unmake it.

The constitution or fixed law, is a letter both of authority and command from the people to their agents—the members of the general assembly. By this letter they are empowered and instructed in their action. This letter is ever-speaking and addressing itself to the agents appointed by and under its provisions; and, under the theory of our state government, is at all times proclaiming the will of the people,—not the people only who made it years or ages bygone, but the existing present people. It is this fundamental principle which inspires the fixed law with life

—*present* life. If I am asked what reason I have for this assertion, I answer in the language of section 3, of the Declaration of Rights, "that the people of the state have the inherent, sole, and exclusive right to alter and abolish their constitution and form of government." And I say, that though this constitution was made by a generation of people who existed when it was made, and that generation has passed away and another succeeded, still the constitution has been neither abolished nor altered; therefore, the presumption exists, conclusively, that it is as much the will of the present generation of the people as it was of that generation of people who made it. Every rational mind assents to the correctness of this conclusion. But how can this be true, if a majority of the present people cannot assemble and alter a constitution which a majority of the people of a past generation assembled and made? Is not the establishment of a constitution a political power, and is not all such power vested as fully in the present generation as it was in the past? Is not the will of the people as sacred *now* as it was a *year ago?*

To this it is answered, that this proposition is theoretically true, and cannot be questioned in the abstract, but that those people, who, in a generation bygone, asserted these golden truths as the rights of man and gifts of God, in order to protect the fixed law, which they then made, and these very rights and gifts, from the rash hands of all future generations of the people, inserted in that very fixed law a provision, whereby were cut off and prohibited all means for ascertaining whether "the people of the state would exercise their sole, exclusive and inherent right of altering their constitution," and thus enjoy the benefit of these sacred rights. They made it (says this answer,) a part of the fixed law, that "*no convention of the people shall be called by the general assembly unless by the concurrence of two-thirds of all the members of each house of the general assembly.*" Therefore, (concludes this answer,) it is clear that the *voice of the people* is forever hushed, and they are forbidden to exercise their inherent right, unless eighty members of one house, consisting of 120 persons, and thirty-four members of the other house consisting of 50 persons, shall allow them—the people—the privilege of altering the law fixed by a bygone age of men.

It is equally manifest, and is an undeniable sequence of this doctrine, that, if a convention should ever become as much pleased with its fixed laws, as was Lycurgus with the institutions framed by him for Sparta, such convention would absolutely prohibit all changes in their self esteemed work.* Perhaps, to diminish the force of the absurd conflict with the proclaimed rights of the people, which such a provision would present, they might provide that no convention should be called unless *nine tenths* of all the members of each house should concur. Or, if the question were left to a vote of the people, they might provide, that there should be no election of delegates, unless *nine tenths* of the registered *voters* should assent thereto. Each of such provisions is defended by those, who maintain, that no convention can be called otherwise than by the mode specified in article 13 of the constitution. All such provisions are alike in principle, though different in words; and are equally at variance with the great political truth that the *people possess the inherent right to alter their constitution.*

I can see no end to the intolerable grievances, which may continually spring up in new states with small populations, forming their first constitutions with such restraints imposed on the will of a majority of the people; and equally grievous even to densely populated states, must be such restraints in the progresses of the age.

With all proper respect for the opinions of those who may differ from mine, I am constrained to say, that the absurdities involved in such a construction with the guarantees of a government according to the popular will, so often repeated in the constitution, forbid me to entertain a

*Lycurgus, ruler of Sparta, charmed with the beauty and greatness of his political establishment, became desirous to make it immortal and deliver it down to the latest times. For this purpose he assembled the people and took an oath of all the officers and citizens, that they would not alter, but would abide by the existing establishment till he should return from Delphi, whither he was then going, with the secret purpose of never returning. He never returned, but the citizens disregarded the unjust imposition No sane man ever questioned their *right* to do so.

doubt, that the privilege of the people to exercise their inherent right of self government remains unaffected by the first section of article 13 of the state constitution. I do not intend to assert that this section of that article is inoperative. I shall turn to its consideration presently. But I freely declare it as my opinion, deliberately and much considered, that even if that article had been so worded as to remove all cavil as to its meaning, by declaring in express words, that "*the people should not assemble in convention otherwise than as provided in that section*," the provision would have been destitute of all obligation. For, I maintain, as a cardinal principle in the broad self government by universal suffrage, where each provision in the fixed law owes its original existence to a majority, that every such provision must depend, for the continuation of its existence, upon the same will which created it, namely the will of the present people, that that will cannot be crushed or impaired in its strength by the past creating will; that the work of the first will is as much subject to change by the second will, as it was to be moulded by the first will; and that every device, by the creating will, to dethrone the future will of the people, or smother its existence, or command it into silence, is a fraud on the inherent right of the people to have their will, and to live under a government of their will. To hold otherwise, is to maintain that the people may be defrauded of the right of self-government, under the pretence of protecting constitutions from changes by the popular will!!!

It has been suggested that the convention of 1868 has conferred on the legislature no express power to provide ways and means for ascertaining the will of the people to have a convention. If that be so, still, if the people have an *inherent* right to a privilege, *guaranteed by the constitution*, there must be some mode of imparting practical life to that privilege and securing its fruits. In every code of laws, where a right is proclaimed and no special remedy is provided, one is allowed by implication, and that one is selected which is most adaptable to secure the privilege. Every person concedes that the general assembly is the fittest, and, indeed, the only fit, instrument for that purpose. In all cases of similar defects (if defects they may be called) in the constitutions of the states, the duty of making provision to ascertain the popular will has been assumed by that branch of national power, without question, in this state, of its authority in such cases, until recently. Certainly, if in the absence of express provision, there be any authority for such purpose, none can be so appropriate as the legislative agents of the people themselves. This power of the legislature, to provide the means whereby their will may be known, has been recognized in this state as well by the legislature of 1834, as by the convention which assembled in 1835 and formed what is now article 13 of the present constitution. I need no higher authority for the existence of such power, as it stood undisputed and unquestioned by such jurists as Judges Daniel, Toomer and Seawell, than the openly declared opinion, in their presence, of William Gaston. In the case of *Luther vs. Borden* 7 How. 1, the power is conceded to the legislature by the bar and the court. But it is my opinion that the existence of such legislative power, in this state, may well be asserted under section 3 of the Declaration of Rights, a part of the constitution itself. This section, after declaring that the people of the state have an inherent right to alter their constitution and form of government, expressly provides that "such right should be exercised in pursuance of law and consistently with the constitution of the United States."

"In *pursuance of law*." What law? Why, such law as might be provided for that purpose by the legislative authority. If the framers had intended to limit the power of altering it to the specific mode prescribed in article 13 of that instrument, the form of expression in section 3 of the Declaration of Rights would manifestly have been "in pursuance of the constitution of the state, and consistently with the constitution of the United States." The use of the term *law* ignores the idea that the mode of alteration was intended to be confined to the mode specified by the *constitution*. Loose, as in many respects, is the language of that instrument, it can hardly be supposed, that while its framers were so careful in guarding against a collision with the constitution of the United State, they were so

grossly remiss in overlooking a collision with the constitution of the state,—(even deserting its universal appellation of *constitution* and calling it a *law*,)—if they intended to set up that instrument as the only guide in any proposed change of its provisions.

Doubtless, the framers of this section (3) (which was unknown to the constitution before 1868,) had in mind the celebrated unlawful attempt made in 1841–'2 by Dorr, and others, citizens of Rhode Island, to change the form of government in that state, without any law passed for that purpose. They undertook to do this, through the instrumentality of mere gatherings of the people, whether qualified voters or not, assembled at their call, and voting without any *law* passed for that purpose. This mode was declared illegal and revolutionary, and was decided to be an usurpation of power, by the courts both of the state and the United States. After this revolutionary plan for altering the constitution was defeated, the legislature of Rhode Island, in obedience to the voice of a decided popular will, passed a *law* providing a mode for the people to call a convention. And "in pursuance of law" they did call a convention, which reformed their constitution to suit the popular will. The Rhode Island case illustrates fully the nature of the right of the people to change their constitution 'in pursuance of law and consistently with the constitution of the United States."

In my judgment I might here rest the argument in support of the power of the legislature to provide the means, whereby the people may express their will in regard to the proposed changes of the constitution; but the question has been asked, Of what use, then, is section 1 of article 13? The same question was presented in the convention of 1835, and was answered by Mr. Gaston, in substance, That the authority conferred in that section was not intended to limit the power of the *people* to call a convention, by their votes in pursuance of law passed for that purpose, but to allow the legislature, too, to call a convention, whenever two-thirds of all the members of each house should concur so to do. It was then deemed true, and we may assume it to be true at all times, that whenever eighty members of a house of one hundred and twenty, and thirty-four members of a house of fifty, all elected upon the basis of numbers and fresh from the people, shall concur in voting for a convention of the people, the vote will be in full accordance with the popular will. With the overwhelming proof of this will which such majorities of the representatives of the people would exhibit, it would be, manifestly, a superfluous and needless work to ask of the people *whether they wanted a convention.* Common sense teaches us that it should be called at once by the people's representatives.

The manifest difference between the two modes is, that in the former case the people determine for themselves, as they have a right to do even in doubtful cases, their will whether they desire a convention. In the latter case that will is presumed to have been fully determined by the election of members; and the legislature proclaims it and proceeds at once to provide the means of giving it effect.

In this light section 1 of article 13 was viewed by the convention of 1835. If, as argued by some, this section was intended to deprive 80,000 voters of the privilege of changing their constitution because other 40,000 of their political equals would not consent, then the government is an oligarchy, both in form and practice, and the fervid declarations scattered throughout the Declaration of Rights, "that all men are created equal;" that "all political power is vested in and derived from the people;" that "all government is founded upon their will only;" that "they have the inherent, sole, and exclusive right of regulating the government;" "of altering and abolishing their constitution and form of government;" that "all elections ought to be free;" that "no property qualification ought to affect the right to vote or hold office;" all—all of them are but beautiful flowers, strewn by the hand of the artful demagogue, over the tomb of popular rights.

Although it be true, in contemplation of the constitution, that the members of each house are presumed to represent the views of their constituents, it would be unwise to conclude, therefore, that whenever a bare majority of the representatives may desire a convention, the people desire one also, and to call it without consulting them; because experience has often taught us that a majority of party *representatives*

may be elected by a minority of the whole number of *voters*. Hence it would be unwise to allow a mere majority of the members of a legislature—or even concurrent mere majorities of both houses—to call a convention; but, certainly, the spirit of the present constitution forbids all idea that any grievance can result from the people's being allowed to vote whether they desire a convention. For, if the representatives should, at any time, be remiss in preparing the means for exercising this right, the people are invited to "assemble together to consult for their common good, to instruct their representatives and apply to the legislature for a redress of grievances;" and we are, moreover, assured that to aid the people in this, "elections should be often held." Conventions authorized by law, and instructed by the law, under which they assemble to make specific changes in the constitution, have a notable and recognized precedent in this state. It is wrong to suppose that any true lover of liberty will depart from such instructions and seek to make any fixed law without the full popular sanction. Mr. Gaston, in the convention of 1835, expresses my views, in the following language:

"According to the theory of our government, all political power was derived from the people, and when they choose to make a grant of power, that they might make a plenary or a restricted grant, might give it all or in part. The Legislature by the act proposed to the people a convention, with powers, restrictions and limitations set forth in the act. It was as it came from the legislature, no more than a proposition or recommendation. It must originate somewhere, and with nobody could it have originated with so much propriety as in that which represented the people for legislative purposes. The proposition having been sanctioned, it became an act of the people; but it has been sanctioned precisely as it was proposed. Such a convention as is proposed in the act of assembly, and no other, has been called; and therefore, that act, so sanctioned, must be regarded as our power of attorney. If we transcend the limits or refuse obedience to the conditions therein provided, we are not the convention called by the people, but a self-constituted body."

In conclusion, I desire to say, that I cordially endorse the provision in our constitution, that the right to change the constitution "should be exercised in pursuance of law;" and as the legislative power is vested, in the general assembly, that body alone has the unquestioned power to make a law, whereby the people may exercise their "inherent, sole, and exclusive right to alter and abolish their constitution."

I am, respectfully, yours,

B. F. MOORE.